

BEFORE THE BOARD OF CHIROPRACTORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.126.301 definitions, 24.126.401) ON PROPOSED AMENDMENT
fee schedule, 24.126.501, 24.126.507,) AND ADOPTION
24.126.510 and 24.126.511 licensing and)
scope of practice, 24.126.701 and)
24.126.704 licensing and board specific)
rules, 24.126.910 impairment evaluators,)
24.126.2101 renewals-continuing education)
requirements, 24.126.2301 unprofessional)
conduct, and the proposed adoption of)
NEW RULE I fee abatement, and)
NEW RULE II participation in disaster and)
emergency care-liability of chiropractor)

TO: All Concerned Persons

1. On April 27, 2006, at 1:00 p.m. a public hearing will be held in room 489, of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Chiropractors (board) no later than 5:00 p.m., on April 21, 2006, to advise us of the nature of the accommodation that you need. Please contact Sharon McCullough, Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdchi@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2005 Montana Legislature enacted Chapter 467, Laws of 2005 (House Bill 182), an act generally revising and consolidating professional and occupational licensing laws and distinguishing between department and board or program duties regarding licensure, examination, and fees. The bill was signed by the governor on April 28, 2005, and became effective on July 1, 2005. The board determined it is reasonably necessary to amend certain existing rules to implement the 2005 legislation and comply with the 2005 Montana Legislature's intent to simplify and standardize the licensure and renewal processes for all boards and licensees within the department.

It is reasonable and necessary to amend the rules throughout to achieve consistent use of terminology within the rules of the board and also between the board's and department's statutes and rules. Amendments to certain catchphrases, as well as grammatical, organizational, and formatting changes, are being made to

simplify and streamline the board's rules and to comply with ARM formatting rules. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule. Authority and implementation cites are amended throughout to accurately reflect all statutes implemented through the rules, to provide the complete sources of the board's rulemaking authority and to delete references to repealed statutes.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.126.301 DEFINITIONS (1) through (3) remain the same.

(4) "New doc seminar" means a program provided by the board that is targeted to new licensees as a source of information on state laws and rules and other various topics. The program is open to all licensed chiropractors.

(4) remains the same but is renumbered (5).

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA

IMP: 37-1-131, 37-12-104, 37-12-201, MCA

REASON: The board determined it is reasonable and necessary to define "new doc seminar" to clarify and implement new provisions of ARM 24.126.2101 as proposed in this notice.

24.126.401 FEE SCHEDULE

(1) Application fee	\$125 <u>300</u>
(2) Re-examination fee <u>per section of jurisprudence</u>	
(written/practical)	50 <u>100</u>
(3) Renewal fee	
(a) Active license	150 <u>200</u>
(b) Inactive license	50 <u>100</u>
<u>(c) Impairment evaluator</u>	<u>25</u>
(4) Late renewal fee	50
(5) Original license fee	75
(6) (4) Temporary permit	25 <u>100</u>
(7) (5) Application for impairment evaluators	400 <u>250</u>
(8) Certificate for impairment evaluators	50
(9) Renewal of certificate for impairment evaluators	50
(10) (6) Application fee for student/interns	25 <u>100</u>
(11) (7) Application fee for practitioners	
proposing to serve as preceptors	25 <u>100</u>
(12) remains the same but is renumbered (8).	

AUTH: 37-1-134, 37-12-201, MCA

IMP: 37-1-134, 37-12-201, 37-12-302, 37-12-304, ~~37-12-307~~, MCA

REASON: The board has determined that there is reasonable necessity to make the proposed fee changes in order to comply with the provisions of 37-1-134, MCA, and

to keep the board's fees commensurate with program costs. The department, in providing administrative services to the board, has determined that unless the fees are raised as proposed, to accommodate increased board expenditures and meet budgetary needs, the board will have a shortage of operating funds by FY 2007. The current board appropriation of \$80,811.00 will be insufficient to sustain a fiscally sound base for the board. The estimated increase in annual revenue is \$32,725.00 and the board estimates that approximately 623 licensees and license applicants will be affected by the proposed fee changes.

The board determined it is reasonably necessary to combine license and application fees where necessary into a single licensure fee. This combination will simplify the rule and alleviate confusion among licensees and applicants.

24.126.501 APPLICATIONS (1) Pursuant to the requirements of 37-12-302, MCA, an application for original license, renewal, examination, temporary permit, or ~~reactivation~~ activation of an inactive license must be made on a form provided by the ~~board~~ department and completed and signed by the applicant, with the signature acknowledged before a notary public.

(2) remains the same.

~~(3) The board shall require the applicant to submit a recent, passport-type photograph of the applicant.~~

~~(4) The board shall review fully completed applications for compliance with board law and rules. The board may request additional information or clarification of information provided in the application as it deems reasonably necessary. Incomplete applications that are received and cannot be resolved in a timely or convenient manner shall be returned to the applicant with a statement regarding incomplete portions.~~

(5) remains the same but is renumbered (3).

~~(6)~~ (4) The ~~board~~ department shall notify the applicant in writing of the results of its evaluation of the application.

(7) and (8) remain the same but are renumbered (5) and (6).

AUTH: 37-1-131, 37-12-201, MCA

IMP: 37-1-131, 37-12-302, 37-12-304, ~~37-12-305~~, MCA

REASON: It is reasonable and necessary to delete section (3) at the request of the department to further facilitate the process of online licensure renewal as the requirement of a photograph may inhibit and delay the process.

24.126.507 TEMPORARY PERMIT (1) through (3) remain the same.

(4) A notarized statement consenting to the above conditions shall be signed by both the supervising licensed chiropractor and the applicant, and filed with the ~~board~~ department.

(5) remains the same.

AUTH: ~~37-1-131~~, 37-1-319, 37-12-201, MCA

IMP: 37-1-305, ~~37-12-305~~, MCA

24.126.510 ENDORSEMENT (1) remains the same.

AUTH: 37-12-201, MCA

IMP: 37-1-131, 37-1-304, 37-12-305, MCA

24.126.511 DISPLAY OF LICENSE (1) The form of license is to be made and approved by the ~~board~~ department and signed by the applicant pursuant to 37-1-104, MCA.

(2) and (3) remain the same.

(4) Licensees shall immediately notify the ~~board~~ department of lost, damaged, or destroyed licenses and obtain a duplicate license by submitting a written request to the ~~board~~ department.

AUTH: ~~37-1-104~~, 37-1-131, 37-12-201, MCA

IMP: 37-1-104, 37-12-201, MCA

24.126.701 INACTIVE STATUS (1) through (2)(a) remain the same.

(b) proof of completion of 12 hours of approved continuing education in the year preceding ~~reinstatement~~ activation.

AUTH: 37-1-131, 37-1-134, 37-1-319, 37-12-201, ~~37-12-307~~, MCA

IMP: ~~37-1-134, 37-1-319~~, 37-12-201, ~~37-12-307~~, MCA

24.126.704 INTERNS AND PRECEPTORS (1) remains the same.

(2) A student intern must complete an application form provided by the ~~board~~ department and furnish current transcripts from the chiropractic college attended.

(3) through (12) remain the same.

(13) All applications for intern/preceptor programs must be approved by the ~~board~~ department prior to starting the program.

AUTH: 37-1-131, 37-12-201, 37-12-304, MCA

IMP: 37-12-304, MCA

24.126.910 RECERTIFICATION RENEWAL - DENIAL - REVOCATION

(1) ~~Effective September 2, 2000, a~~ A minimum of four hours of specialized continuing education relevant to impairment evaluation must be demonstrated every four years, or within one year of a new edition to the American Medical Association's guides to the evaluation of permanent impairment. These hours must be demonstrated in order to qualify for certification renewal. This requirement is in addition to the continuing education hours required for annual renewal of licenses to practice chiropractic in this state.

(2) and (3) remain the same.

(4) Impairment evaluator licenses shall be renewed annually.

AUTH: 37-1-136, 37-12-201, MCA

IMP: 37-12-201, MCA

REASON: The board determined it is reasonably necessary for impairment evaluator licenses to renew annually in order to minimize the administrative cost and staff time spent tracking these licenses under the previous four-year renewal cycle.

24.126.2101 RENEWALS - CONTINUING EDUCATION REQUIREMENTS

(1) and (2) remain the same.

(a) In the first full year of licensure, new graduates can fulfill the continuing education requirement by attending one session of the "new doc seminar" in lieu of the 12-hour continuing education requirement. This provision does not apply to out-of-state applicants applying for licensure by endorsement or reciprocity.

(3) For the period beginning September 1, 1997 through September 1, 2000, inclusive, the The board is requiring will require each licensee to demonstrate successful completion of a professional boundary and ethics continuing education course. The course shall be a minimum of four Four hours of professional boundaries and ethics continuing education in length and will be in addition to the 12-hour continuing education annual requirement. Each licensee will be required to complete the course once during that time period every four years beginning September 1, 2006.

(4) through (8) remain the same.

AUTH: 37-1-134, ~~37-1-141~~, 37-1-319, 37-12-201, ~~37-12-307~~, MCA

IMP: 37-1-134, 37-1-141, 37-1-306, 37-1-319, ~~37-12-307~~, MCA

REASON: It is reasonably necessary to amend the rule as the board determined that the public is adequately protected if new licensees are allowed to substitute attendance of the new doc seminar for completion of the 12 hours of continuing education during the first year of licensure. The board provides important information in the seminar that should alleviate common mistakes new practitioners make. Attendance of the seminar also provides new graduates with the opportunity to ask questions and become familiar with the board's statutes and rules.

The board is amending section (3) to require that Montana licensees update their knowledge and awareness of professional boundaries and ethics every four years. The board notes that many of the complaints before the board deal with these types of issues and is committed to be proactive by keeping professional boundaries and ethics at the forefront of licensees' awareness.

24.126.2301 UNPROFESSIONAL CONDUCT (1) through (1)(e) remain the same.

(f) ~~collecting charging~~ fees or charges for services or treatment different from the fee or charge the licensee submits to a third-party payer for that service or treatment; . Free clinics may be offered to the indigent or economically deprived; except as hereinafter provided. This subsection is intended to prohibit offering the above listed practices to the public as well as the actual practices, except that, in instances where the intent is not to collect an excessive remuneration from the third-party payer, but rather to provide services at a reduced rate to a patient unable to afford the deductible or co-payment, the services may be performed for a lesser

~~charge or fee. The burden of proof for establishing that this is the case shall be on the licensee;~~

(g) through (r) remain the same.

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA

IMP: 37-1-131, 37-1-316, 37-12-201, MCA

REASON: The board determined it is reasonable and necessary to amend this rule to clarify that it is not ethical and is considered unprofessional conduct for licensees to charge different fees for the same services based on whether or not the patient is covered by a third party payer. Previous language used in the rule was confusing.

5. The proposed new rules provide as follows:

NEW RULE I FEE ABATEMENT (1) The Board of Chiropractors adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

(2) A copy of ARM 24.101.301 is available by contacting the Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513.

AUTH: 37-1-131, MCA

IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The board has determined there is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the board to authorize the department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the board. The department recently adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulations in the licensing programs operated by the department.

Adoption and incorporation of ARM 24.101.301 will allow the department to promptly eliminate excess cash balances of the board that result from unexpectedly high licensing levels or other nontypical events. Abatement in such instances will allow the licensees who have paid fees into the board's program to receive temporary relief provided by abatement. Adoption of this abatement rule does not relieve the board from its duty to use proper rulemaking procedures to adjust the board's fee structure in the event of recurrent instances of cash balances in excess of the statutorily allowed amount.

NEW RULE II PARTICIPATION IN DISASTER AND EMERGENCY CARE -- LIABILITY OF CHIROPRACTOR (1) A chiropractor licensed in this state, licensed or authorized to practice in another state, territory, or possession of the United States, or credentialed as a chiropractor by a federal employer who provides medical care response to an emergency or a federal, state, or local disaster may provide that care without supervision as required by this chapter or with whatever supervision is available. The provision of care allowed by this section is limited to the duration of the emergency or disaster.

(2) A chiropractor who supervises a temporary licensee in response to an emergency or disaster as described in (1) need not comply with the requirements of this chapter applicable to supervising chiropractors.

(3) A chiropractor referred to in (1) who voluntarily, gratuitously, and other than in the ordinary course of employment or practice renders emergency chiropractic care during an emergency or disaster described in (1) is not liable for civil damages for a personal injury resulting from an act or omission in providing that care if the injury is caused by simple or ordinary negligence and if the care is provided somewhere other than in a health care facility or a chiropractic office where those services are normally provided.

(4) A chiropractor who supervises a temporary licensee voluntarily and gratuitously providing emergency care at an emergency or disaster described in (1) is not liable for civil damages for a personal injury resulting from an act or omission in supervising the temporary licensee if the injury is caused by simple or ordinary negligence on the part of the temporary licensee providing the care or on the part of the supervising chiropractor.

AUTH: 37-1-131, 37-12-201, MCA

IMP: 37-1-131, 37-12-104, 37-12-201, MCA

REASON: It is reasonable and necessary to adopt New Rule II to address a request from the department for the board to adopt rules governing the process for licensees from other states to provide chiropractic care and potential liability of such emergency workers in Montana in the event of a state or national emergency situation or disaster.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdchi@mt.gov, and must be received no later than 5:00 p.m., May 5, 2006.

7. An electronic copy of this Notice of Public Hearing is available through the department's and board's site on the World Wide Web at www.chiropractor.mt.gov. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The Board of Chiropractors maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish

to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Chiropractors' administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdcchi@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

10. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

BOARD OF CHIROPRACTORS
Daniel Prideaux, D.C., President

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified by the Secretary of State March 27, 2006